

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

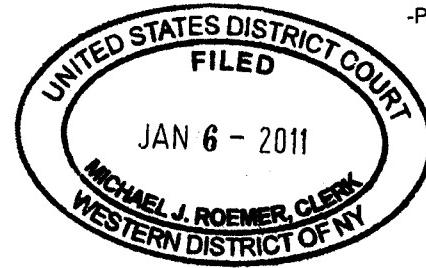
CORNELIUS GREEN,

Plaintiff,

-v-

D.O.C.S. JOHN OR JANE DOE,

Defendants.



-PS-O-

DECISION AND ORDER
09-CV-1106A

Plaintiff, Cornelius Green, an inmate of the Attica Correctional Facility, filed a *pro se* complaint against Lester Wright, the Chief Medical Officer for the New York State Department of Correctional Services ("DOCS"), alleging that his Eighth Amendment rights to be free from cruel and unusual punishment was violated when an orthopedic specialist recommended a surgical procedure for his knee injury--a "patellafemoral stabilization" procedure--but Wright refused to approve the procedure which plaintiff claims has caused him further significant injury and pain. (Docket No. 1). Wright filed a motion to dismiss the complaint, pursuant to Fed.R.Civ.P. 12(b)(6), on the basis that he was only a medical supervisor within DOCS and had no personal involvement in plaintiff's medical treatment. (Docket No. 5.)

The Court granted the motion to dismiss but with leave for plaintiff to file an amended complaint that further explained the factual basis of his claim--*i.e.*,

whether there was “any factual information suggesting that the surgery did not occur for improper reasons” (Docket No. 9, Decision and Order, at 5.) Plaintiff filed an amended complaint against “D.O.C.S. John or Jane Doe” (Docket No. 10) and DOCS filed a motion to dismiss the amended complaint on the basis that DOCS cannot be sued under the Eleventh Amendment (Docket No. 11).

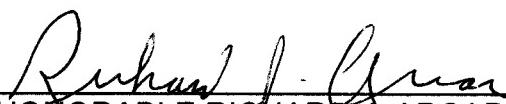
Prior to resolution of defendant’s motion to dismiss, the Court hereby requests the New York State Attorney General’s Office, pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d. Cir. 1997)(per curiam), to use its best efforts to ascertain the full name of the John or Jane Doe defendant “Medical Officer” whom plaintiff alleges denied the surgical procedure plaintiff was recommended to undergo and whom plaintiff seeks to sue. Plaintiff’s amended complaint alleges that the denials occurred on or about November 29, 2007, August 1, 2008 and April 30, 2009. The Attorney General’s Office is also requested to provide an address where the defendant can currently be served. The Attorney General’s Office need not undertake to defend or indemnify this individual at this juncture. This order merely provides a means by which plaintiff may name and properly serve the defendant as instructed by the Second Circuit in *Valentin*.

The New York State Attorney General’s Office is hereby requested to produce the information specified above regarding the identity of the John Doe defendant by **February 1, 2011**. Once this information is provided, plaintiff’s

amended complaint shall be deemed amended to reflect the full name of the defendants, summons shall be issued and the Court shall direct service on the defendant.

Defendant's motion to dismiss the amended complaint is therefore stayed pending the Attorney General Office's response to this Order and service of the amended complaint on the defendant or defendants identified by the Attorney General's Office.

IT IS SO ORDERED.


HONORABLE RICHARD J. ARCARA
DISTRICT JUDGE
UNITED STATES DISTRICT COURT

Dated: June 6, 2011